

JAMES P. DIWIK (Bar No. 164016)
james.diwik@sdma.com
JOEL M. LONG (Bar No. 226061)
joel.long@sdma.com
SEDGWICK, DETERT, MORAN & ARNOLD LLP
One Market Plaza
Steuart Tower, 8th Floor
San Francisco, CA 94105-1008
Telephone: 415.781.7900
Facsimile: 415.781.2635

Attorneys for Defendants
Safeco Insurance Companies,
Liberty Mutual Group,
Safeco Corporation, and
First National Insurance Company of America

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:

HSR GENERAL ENGINEERING
CONTRACTORS, INC.,

Debtor.

Case No. 10-58737 CN

Chapter 11

HSR GENERAL ENGINEERING
CONTRACTORS, INC.,

Plaintiff,

v.

SAFECO INSURANCE COMPANIES,

Defendant.

Adversary No. 10-05309 CN

**AMENDED ANSWER TO FIRST
AMENDED COMPLAINT**

This amended answer to plaintiff HSR General Engineering Contractors, Inc.'s ("HSR") first amended complaint (the "FAC") in the above-referenced adversary proceeding is filed on behalf of putative defendants Safeco Insurance Companies, Liberty Mutual Group, Safeco Corporation, and defendant First National Insurance Company of America (collectively, the "Defendants").

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1 4. Paragraph 4 of the FAC consists of legal conclusions to which no response is
2 required.

3 5. First National admits the allegations set forth in Paragraph 5 of the FAC.

4 6. Paragraph 6 of the FAC consists of legal conclusions to which no response is
5 required.

6 7. Paragraph 7 of the FAC consists of legal conclusions to which no response is
7 required. To the extent that a response is required, First National admits that the United States
8 Bankruptcy Court for the Northern District of California has jurisdiction over this adversary
9 proceeding.

10 8. Paragraph 8 of the FAC consists of legal conclusions to which no response is
11 required.

12 9. First National lacks knowledge and information sufficient to enable it to admit or
13 deny the allegations set forth in Paragraph 9 of the FAC and denies said allegations on that basis.

14 10. First National lacks knowledge and information sufficient to enable it to admit or
15 deny the allegations set forth in Paragraph 10 of the FAC and denies said allegations on that
16 basis.

17 11. With respect to Paragraph 11 of the FAC, First National admits that, on January 2,
18 2008, HSR and others executed a General Agreement of Indemnity for Contractors in favor of
19 First National. The allegations set forth in Paragraph 11 of the FAC are otherwise denied.

20 12. Paragraph 12 of the FAC consists of legal conclusions to which no response is
21 required.

22 13. With respect to Paragraph 13 of the FAC, First National admits that it is a creditor
23 in the main bankruptcy case. The allegations set forth in Paragraph 13 of the FAC are otherwise
24 denied.

25 14. With respect to Paragraph 14 of the FAC, First National admits that it filed an
26 objection to HSR's motion to use cash collateral in the main bankruptcy case. The allegations
27 set forth in Paragraph 14 of the FAC are otherwise denied.
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1 15. With respect to Paragraph 15 of the FAC, First National admits that, at HSR's
2 request, First National issued certain performance and payment bonds on HSR's behalf in
3 connection with certain construction projects located in Northern California, the terms of which
4 bonds speak for themselves. The allegations set forth in Paragraph 15 of the FAC are otherwise
5 denied.

6 16. First National lacks knowledge and information sufficient to enable it to admit or
7 deny the allegations set forth in Paragraph 16 of the FAC and denies said allegations on that
8 basis.

9 17. With respect to Paragraph 17 of the FAC, First National denies that there are no
10 open payment bond claims on the Coyote Point Bay Trail Improvements Project. First National
11 lacks knowledge and information sufficient to enable it to admit or deny the remaining
12 allegations set forth in Paragraph 17 of the FAC and denies said allegations on that basis.

13 18. With respect to Paragraph 18 of the FAC, First National admits that it has
14 received multiple payment bond claims in connection with the Presidio Trust Project. First
15 National lacks knowledge and information sufficient to enable it to admit or deny the remaining
16 allegations set forth in Paragraph 18 of the FAC and denies said allegations on that basis.

17 19. First National lacks knowledge and information sufficient to enable it to admit or
18 deny the allegations set forth in Paragraph 19 of the FAC and denies said allegations on that
19 basis.

20 20. With respect to Paragraph 20 of the FAC, First National denies that there are only
21 two open payment bond claims on the Jacques Gulch Restoration Project. First National lacks
22 knowledge and information sufficient to enable it to admit or deny the remaining allegations set
23 forth in Paragraph 20 of the FAC and denies said allegations on that basis.

24 21. First National lacks knowledge and information sufficient to enable it to admit or
25 deny the allegations set forth in Paragraph 21 of the FAC and denies said allegations on that
26 basis.

1 22. First National lacks knowledge and information sufficient to enable it to admit or
2 deny the allegations set forth in Paragraph 22 of the FAC and denies said allegations on that
3 basis.

4 23. First National denies the allegations set forth in Paragraph 23 of the FAC.

5 24. First National denies the allegations set forth in Paragraph 24 of the FAC.

6 25. First National denies the allegations set forth in Paragraph 25 of the FAC.

7 26. First National lacks knowledge and information sufficient to enable it to admit or
8 deny the allegations set forth in Paragraph 26 of the FAC and denies said allegations on that
9 basis.

10 27. First National lacks knowledge and information sufficient to enable it to admit or
11 deny the allegations set forth in Paragraph 27 of the FAC and denies said allegations on that
12 basis.

13 28. With respect to Paragraph 28 of the FAC, First National admits that it has not
14 withdrawn its July 21, 2010 hold funds letters to certain bond obligees. The allegations set forth
15 in Paragraph 28 of the FAC are otherwise denied.

16 29. With respect to Paragraph 29 of the FAC, First National admits that it has a
17 priority contractual, legal and equitable right to bonded contract proceeds. The allegations set
18 forth in Paragraph 29 of the FAC are otherwise denied.

19 30. First National lacks knowledge and information sufficient to enable it to admit or
20 deny the allegations set forth in Paragraph 30 of the FAC and denies said allegations on that
21 basis.

22 31. First National lacks knowledge and information sufficient to enable it to admit or
23 deny the allegations set forth in Paragraph 31 of the FAC and denies said allegations on that
24 basis.

25 32. With respect to Paragraph 32 of the FAC, First National admits that bonded
26 contract proceeds are trust funds for the payment of bonded obligations. The remaining
27 allegations set forth in Paragraph 32 of the FAC consist of legal conclusions to which no
28 response is required.

1 33. With respect to Paragraph 33 of the FAC, First National admits that bonded
2 contract proceeds are not the property of HSR's bankruptcy estate.

3 34. First National denies the allegations set forth in Paragraph 34 of the FAC.

4 35. First National denies the allegations set forth in Paragraph 35 of the FAC.

5 36. First National denies the allegations set forth in Paragraph 36 of the FAC.

6 **FIRST CLAIM FOR RELIEF**

7 **Declaratory Relief – 28 U.S.C. § 2201**

8 37. First National restates and incorporates by reference the responses set forth in
9 Paragraphs 1-36 above.

10 38. Paragraph 38 of the FAC consists of legal conclusions to which no response is
11 required. To the extent that a response is required, the allegations set forth in Paragraph 38 of
12 the FAC are denied.

13 39. With respect to Paragraph 39 of the FAC, First National admits that it has a
14 priority contractual, legal and equitable right to bonded contract proceeds. The allegations set
15 forth in Paragraph 39 of the FAC are otherwise denied.

16 40. With respect to Paragraph 40 of the FAC, First National admits that it has a
17 priority contractual, legal and equitable right to bonded contract proceeds. The allegations set
18 forth in Paragraph 40 of the FAC are otherwise denied.

19 41. Paragraph 41 of the FAC consists of legal conclusions to which no response is
20 required. To the extent that a response is required, the allegations set forth in Paragraph 41 of
21 the FAC are denied.

22 **SECOND CLAIM FOR RELIEF**

23 **Injunctive Relief**

24 42. First National restates and incorporates by reference the responses set forth in
25 Paragraphs 1-41 above.

26 43. First National denies the allegations set forth in Paragraph 43 of the FAC.

27 44. First National denies the allegations set forth in Paragraph 44 of the FAC.

45. Paragraph 45 of the FAC consists of legal conclusions to which no response is required. To the extent that a response is required, the language of the referenced statute speaks for itself. The allegations set forth in Paragraph 45 of the FAC are otherwise denied.

46. With respect to Paragraph 46 of the FAC, First National admits that it has a priority contractual, legal and equitable right to bonded contract proceeds. The allegations set forth in Paragraph 46 of the FAC are otherwise denied.

47. First National denies the allegations set forth in Paragraph 47 of the FAC.

48. First National denies the allegations set forth in Paragraph 48 of the FAC.

49. First National denies the allegations set forth in Paragraph 49 of the FAC.

50. First National denies the allegations set forth in Paragraph 50 of the FAC.

THIRD CLAIM FOR RELIEF

Avoidance and Recovery of Preferential Transfers – 11 U.S.C. § 547

51. First National restates and incorporates by reference the responses set forth in Paragraphs 1-50 above.

52. First National lacks knowledge and information sufficient to enable it to admit or deny the allegations set forth in Paragraph 52 of the FAC and denies said allegations on that basis.

53. First National lacks knowledge and information sufficient to enable it to admit or deny the allegations set forth in Paragraph 53 of the FAC and denies said allegations on that basis.

54. First National lacks knowledge and information sufficient to enable it to admit or deny the allegations set forth in Paragraph 54 of the FAC and denies said allegations on that basis.

AFFIRMATIVE DEFENSES

First National alleges the following affirmative defenses to the FAC:

FIRST AFFIRMATIVE DEFENSE

The FAC and each of the purported causes of action therein fail to state facts sufficient to constitute a cause of action against First National.

1 **SECOND AFFIRMATIVE DEFENSE**

2 Any actions or inactions by First National were justified and/or privileged.

3 **THIRD AFFIRMATIVE DEFENSE**

4 HSR's purported injuries, if any, were caused by HSR's own acts and omissions.

5 **FOURTH AFFIRMATIVE DEFENSE**

6 HSR is not entitled to injunctive relief because any alleged injury to HSR is not
7 immediate or irreparable.

8 **FIFTH AFFIRMATIVE DEFENSE**

9 HSR's claims are barred in light of First National's priority contractual, legal and
10 equitable right to bonded contract proceeds.

11 **SIXTH AFFIRMATIVE DEFENSE**

12 First National presently lacks sufficient knowledge or information upon which to form a
13 belief as to whether additional affirmative defenses may be available to it. Consequently, First
14 National reserves the right to assert additional affirmative defenses in the event that discovery or
15 First National's factual investigation and legal analysis in this matter indicate that such
16 affirmative defenses would be appropriate.

17 Based on the above, First National respectfully requests judgment as follows:

- 18 1. That no relief be granted to HSR, and that the FAC be dismissed with prejudice;
19 2. For costs of suit; and
20 3. For such other and further relief as this Court deems just and proper.

21 DATED: December 7, 2010 SEDGWICK, DETERT, MORAN & ARNOLD LLP

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24 By: /s/ Joel M. Long _____
25 Joel M. Long
26 Attorneys for Defendants
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